

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
SAN ANTONIO DIVISION

GWENDOLYN HARVEY	§	
<i>Plaintiff</i>	§	
	§	
VS.	§	
	§	CIVIL NO.: 5:21-CV-383
99 CENTS ONLY STORES	§	
TEXAS, INC. AND 99 CENTS	§	
ONLY STORES, LLC	§	
<i>Defendants</i>	§	

DEFENDANT'S NOTICE OF REMOVAL

COMES NOW, 99 CENTS ONLY STORES TEXAS, INC. and 99 CENTS ONLY STORES, LLC, Defendants and files this their Notice of Removal pursuant to 28USC §1446(a), and hereby removes this case from the 285th Judicial District Court in Bexar County, Texas, Texas to the United States District for the Western District of Texas.

Defendants demand a jury trial on all issues in this case.

Defendants have denied the claims and damages alleged in Plaintiff's Original Petition and file this notice without waving any claims, defenses, exceptions or obligations that may exist in its favor in State or Federal Court.

I.

INTRODUCTION

99 CENTS ONLY STORES TEXAS, INC. and 99 CENTS ONLY STORES, LLC, are the Defendants in a civil action commenced on March 23, 2021, in the 285th District Court of Bexar County, Texas with a Cause No. 2021-CI-05403 and styled, Gwendolyn Harvey vs. 99 Cents Only Stores Texas, Inc. and 99 Cents Stores, LLC (hereinafter referred to as the State Court Action).

Copies of all pleadings and orders served in the State Court action are attached along with an index of the State Court documents.

The address for the Judicial District Court is Bexar County Courthouse, 100 Dolorosa, 2nd Floor, San Antonio, Texas 78205.

Plaintiff in the State Court Action is Gwendolyn Harvey and her attorney is Ryan Orsatti, 4634 De Zavala Rd., San Antonio, Texas 78249, Tel. 210/525-1200, Email: ryan@ryanorsattilaw.com His State Bar Number is 24088910. (No email listed on pleading).

99 CENTS ONLY STORES TEXAS, INC. and 99 CENTS ONLY STORES, LLC, Defendants are represented by Michael J. Griffin, III, Griffin & Griffin, 3003 South Loop West, Suite 206, Houston, Texas 77054, Tel. 713/228-6568, Email: Michael@griffinandgriffin.us; E-service: eservice@griffinandgriffin.us; SBN: 08463020.

There are no other parties to this Civil Action.

II.
BASIS FOR REMOVAL

Defendants filed an Answer in the State District Court action.

The lawsuit was filed in Bexar County on March 23, 2021 and the Defendants were served by certified mail on March 30, 2021. This Notice of Removal is filed within thirty (30) days of receipt of the citation and petition and as such is timely filed pursuant to 28 U.S.C. §1446(b).

A. Diversity of Citizenship

1. The District Courts of the United States have original jurisdiction of this action based on Diversity of Citizenship among the parties. Every Defendant is now and was at the time this action was filed diverse in citizenship from the Plaintiff. Plaintiff is or was at the time this suit was filed a citizen of the State of Texas.

2. As stated in Plaintiff's Original Petition, Plaintiff is a Texas resident and 99 CENTS ONLY STORES TEXAS, INC. is a Delaware Corporation and 99 CENTS ONLY STORES, LLC is a California Corporation. As such, Defendants are now and at the time of this lawsuit was commenced, citizens of a state other than Texas.

B. Amount in Controversy in this action

Exclusive of interests and costs the amount in controversy exceeds the sum of \$75,000.00. In her petition Plaintiff is asking for a judgment over \$250,000.00 but not more than \$1,000000.

Removal of the State Court Action is proper pursuant to 28 U.S.C. §1441 since it is a Civil Action brought in the State Court and the Federal District Court has original jurisdiction over the subject matter under 28 U.S.C. §1332(a) as Plaintiff and Defendants are diverse in citizenship.

WHEREFORE PREMISES CONSIDERED Defendants respectfully pray that the Court, pursuant to the statutes and in conformity with the requirements set forth in 28 U.S.C. §1446, remove this action from the 285th Judicial District Court in Bexar County, Texas to this Honorable Court in the Southern District of Texas.

Respectfully submitted,

Date: 04/14/2021

Michael J. Griffin

MICHAEL J. GRIFFIN III
SBN: 08463020
FEDERAL I.D. NO. 9661
GRIFFIN & GRIFFIN
3003 South Loop West, Suite 206
Houston, Texas 77054-1372
(713) 228-6568 Tel.
(713) 228-9900 Fax.
Michael@griffinandgriffin.us

**ATTORNEY FOR DEFENDANTS
99 CENTS ONLY STORES TEXAS,
INC. AND 99 CENTS ONLY STORES,
LLC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel of record by certified mail, return receipt requested, e-service, e-mail, facsimile transmission, and/or hand delivered by messenger, on this the 14th day of April 2021.

Ryan L. Orsatti
RYAN ORSATTI LAW
4634 De Zavala Rd.
San Antonio, Texas 78249
Tel. 210/525-1200
Fax. 210/951-5545
Email: ryan@ryanorsattilaw.com

Date: 04/14/2021

Michael J. Griffin

MICHAEL J. GRIFFIN, III

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
SAN ANTONIO DIVISION

GWENDOLYN HARVEY	§	
<i>Plaintiff</i>	§	
	§	
VS.	§	
	§	CIVIL NO.: 5:21-CV-383
99 CENTS ONLY STORES	§	
TEXAS, INC. AND 99 CENTS	§	
ONLY STORES, LLC	§	
<u><i>Defendants</i></u>	§	

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fed. R. Civ. P.7.1 CENTS ONLY STORES TEXAS, INC. and 99 CENTS ONLY STORES, LLC, Defendants provides the following information:

For a nongovernmental corporate party, the name(s) of its parent corporation and any publicly held corporation that owns 10% or more of its stock: ARES MANAGEMENT and CPP INVESTMENT BOARD.

A complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities that are financially interested in the outcome of the case:

99 CENTS ONLY STORES TEXAS, INC. and 99 CENTS ONLY STORES, LLC, Defendants, Michael J. Griffin, III – Defendant’s Attorney;

GWENDOLYN HARVEY – Plaintiff, Ryan Orsatti – Plaintiff’s Attorney.

Respectfully submitted,

Date: 04/14/2021

Michael J. Griffin

MICHAEL J. GRIFFIN III
SBN: 08463020
FEDERAL I.D. NO. 9661
GRIFFIN & GRIFFIN
3003 South Loop West, Suite 206
Houston, Texas 77054-1372
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**ATTORNEY FOR DEFENDANT
99 CENTS ONLY STORES TEXAS,
INC.**

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Fax. 210/951-5545
Email: ryan@ryanorsattilaw.com

Date: 04/14/2021

Michael J. Griffin

MICHAEL J. GRIFFIN, III

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
SAN ANTONIO DIVISION

GWENDOLYN HARVEY	§	
<i>Plaintiff</i>	§	
	§	
VS.	§	
	§	CIVIL NO.: 5:21-CV-383
99 CENTS ONLY STORES	§	
TEXAS, INC. AND 99 CENTS	§	
ONLY STORES, LLC	§	
<i>Defendants</i>	§	

LIST OF COUNSEL OF RECORD

Plaintiff in the State Court Action is Gwendolyn Harvey and her attorney is, Ryan Orsatti, SBN: 24088910, 4634 De Zavala Rd., San Antonio, Texas 78249, Tel. 210/525-1200, ryan@ryanorsattilaw.com.

99 CENTS ONLY STORES TEXAS, INC. and 99 CENTS ONLY STORES, LLC are represented by Michael J. Griffin, III, SBN: 08463020, GRIFFIN & GRIFFIN, 3003 South Loop West, Suite 206, Houston, Texas 77054, Tel. 713/228-6568, Fax. 713/228-9900, Michael@griffinandgriffin.us.

Respectfully submitted,

Date: 04/14/2021

Michael J. Griffin

MICHAEL J. GRIFFIN III
SBN: 08463020
FEDERAL I.D. NO. 9661
GRIFFIN & GRIFFIN
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**ATTORNEY FOR DEFENDANT
99 CENTS ONLY STORES TEXAS,
INC.**

CERTIFICATE OF SERVICE

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Email: ryan@ryanorsattilaw.com

Date: 04/14/2021

Michael J. Griffin

MICHAEL J. GRIFFIN, III

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
SAN ANTONIO DIVISION

GWENDOLYN HARVEY	§	
<i>Plaintiff</i>	§	
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	§	CIVIL NO.: 5:21-CV-383
99 CENTS ONLY STORES	§	
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ONLY STORES, LLC	§	
<i>Defendants</i>	§	

INDEX OF DOCUMENTS TO BE FILED WITH NOTICE OF REMOVAL

1. Plaintiff's Original Petition;
2. Citation and Notice of Service of Process on 99 Cents Only Stores Texas, Inc. and 99 Cents Only Stores, LLC in Cause No. 2021CI05403;
3. Service of Process Transmittal showing service of process by Certified Mail on March 30, 2021;
4. Defendant's Original Answer filed on March 31, 2021;
5. Defendant's Notice of Removal.

2021CI05403

CAUSE NO. _____

GWENDOLYN HARVEY

Plaintiff,

V.

**99 CENTS ONLY STORES TEXAS,
INC., AND 99 CENTS ONLY STORES
LLC**

Defendant

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

285th **JUDICIAL DISTRICT**

OF BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES GWENDOLYN HARVEY ("Plaintiff"), and files her Original Petition and Requests for Disclosure against 99 CENTS ONLY STORES TEXAS, INC. and 99 CENTS ONLY STORES LLC ("Defendants"). In support thereof, Plaintiff would respectfully show the Court as follows:

**I.
DISCOVERY CONTROL PLAN LEVEL**

Plaintiff intends that discovery be conducted under Discovery Level 2.

**II.
PARTIES**

Plaintiff, Gwendolyn Harvey is a n individual who resides in San Antonio, Bexar County, Texas. The last three digits of her driver's license number are 652 and the last three digits of her social security number are 799.

Defendant 99 CENTS ONLY STORES TEXAS, INC. is a foreign for-profit corporation licensed to do business in the State of Texas and may be served with process by serving its registered agent, CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136.

Defendant 99 CENTS ONLY STORES LLC is a foreign limited partnership licensed to do business in the State of Texas and may be served with process by serving its registered agent CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136.

III. JURISDICTION AND VENUE

Venue is proper in Bexar County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all or a substantial part of the events giving rise to the claim occurred in Bexar County, Texas. Jurisdiction is proper because the court has personal jurisdiction over all parties and the amount in controversy is within the jurisdictional limits of the court.

This Court has subject matter jurisdiction over this action because the amount sought herein exceeds the minimum jurisdictional limits of the Court. Specifically, and pursuant to Texas Rule of Civil Procedure 47, Plaintiff states that she seeks damages of over \$250,000, but not more than \$1,000,000.

IV. FACTUAL BACKGROUND

Plaintiff brings this action to recover damages for personal injuries sustained by her in an incident that occurred on or about January 1, 2020, in San Antonio, Bexar County, Texas, which was proximately caused by the negligence of the Defendant.

Plaintiff GWENDOLYN HARVEY was an invitee on the property controlled by Defendants and was injured under the following circumstances: Plaintiff was shopping at the 99 CENTS ONLY STORES located at 5464 Walzem Rd. #3, San Antonio, Texas 78218 when she slipped on a rug as she exited the premises. There was no signage or other safety precautions present to warn patrons of the unsafe condition of the premise. Such negligence created a condition

of Defendants' premises that posed an unreasonable risk of harm to Plaintiff.

As a result of the incident, Plaintiff suffered serious and permanent injuries for which she hereby sues.

**V.
NEGLIGENCE OF DEFENDANT
COUNT 1-PREMISES CLAIM BY INVITEE**

Plaintiff incorporates herein by reference paragraph IV for all purposes as if set forth verbatim.

At the time of the incident made the basis of this cause of action and at all times relevant, Plaintiff was a business invitee of Defendants.

At the time of the incident made the basis of this cause of action and at all times relevant, Defendants opened its premises to the public for business, and as such, were a possessor of the premises.

Plaintiff entered Defendants' premises with Defendants' knowledge and for the mutual benefit of Defendants and Plaintiff. In addition, Plaintiff was authorized to be present on Defendants' premises. As such, Defendants owed a duty to Plaintiff to use ordinary care, including the duty to keep the premises in reasonably safe condition, to inspect the premises, to make safe a condition on the premises which poses an unreasonable risk of harm, to protect and safeguard Plaintiff from unreasonably dangerous conditions on the premises, and/or to warn of their existence.

Plaintiff would show that the acts and/or omissions of Defendants created an unreasonable risk of harm to Plaintiff.

Plaintiff would show Defendant knew of the condition which created an unreasonable risk of harm to her, or, in the alternative, should have known of the condition which created an unreasonable risk of harm to Plaintiff.

Plaintiff would show that Defendants breached their duty of care to Plaintiff. Defendants failed to correct and/or warn Plaintiff of the dangerous condition or to warn Plaintiff constituted negligence, and such negligence was a proximate cause of the occurrence in question and the resulting damages.

Plaintiff would show that the following acts, omissions and/or conditions by Defendants, were a direct and proximate cause of said damages:

- a. Creating an unreasonable dangerous condition,
- b. Failure to adequately ward of a dangerous condition,
- c. Failure to correct an existing dangerous condition,
- d. Failure to use ordinary care to reduce or eliminate an unreasonably dangerous condition which Defendants knew about, or in the exercise of reasonable care, should have known about; and
- e. Failing to act as a reasonably prudent person would under the same or similar conditions.

Each of the foregoing acts and omissions, taken singularly or in combination, was a proximate cause of the injuries and damages to Plaintiff as more fully set forth below.

VI. DAMAGES

At the time of trial of this cause, Plaintiff shall ask this Court to submit to the following elements of damage for its consideration of what sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiff for said damages. These injuries and damages, which are a direct, proximate and/or producing result of Defendants' conduct, are as follows:

- a. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- b. Physical pain and mental anguish sustained in the past;
- c. Physical pain and mental anguish that, in reasonable probability, will be sustained in the future;

- d. Physical impairment, other than the ability to earn money sustained in the past;
and
- e. Physical impairment, other than the ability to earn money that, in reasonable probability, will be sustained in the future.

**VII.
INTEREST**

Plaintiff seeks prejudgment and post-judgment interest on all damage awards.

**VIII.
ALTERNATIVE PLEADINGS**

As provided in rule 48, Texas Rules of Civil Procedure, claims for relief made in this Petition are presented in the alternative when necessary to preserve such claim.

**IX.
JURY DEMAND**

Plaintiff requests a trial by jury and will tender the requisite fee.

**X.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, that this cause be set down for trial before a jury, and that Plaintiff recover judgment of and from Defendants for her actual damages, in such an amount as the evidence shows and the jury determines to be proper, together with pre-judgment interest and post-judgment interest, costs of suit, and such other and further relief to which Plaintiff may show herself to be justly entitled, whether at law or in equity.

Respectfully submitted,

RYAN ORSATTI LAW
4634 De Zavala Rd.
San Antonio, Texas 78249
Tel: (210) 525-1200
Fax: (210) 951-5545



By: _____
Ryan L. Orsatti
Texas Bar No. 24088910
Email: ryan@ryanorsattilaw.com

ATTORNEY FOR PLAINTIFF
GWENDOLYN HARVEY

Case Number: 2021-CI-05403

2021CI05403 500001

GWENDOLYN HARVEY

vs.

IN THE DISTRICT COURT
285th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

99 CENTS ONLY STORES TEXAS INC ET AL

(Note: Attached document may contain additional litigants).

CITATION

"THE STATE OF TEXAS"

DIRECTED TO: 99 CENTS ONLY STORES TEXAS INC

BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM
1999 BRYAN ST 900
DALLAS TX 75201-3136

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org." Said ORIGINAL PETITION was filed on the 23rd day of March, 2021.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 25TH DAY OF March A.D., 2021.

RYAN L ORSATTI
ATTORNEY FOR PLAINTIFF
4634 DE ZAVALA RD
SAN ANTONIO, TX 78249-3545



Mary Angie Garcia
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

By: *Ana Cortijo*, Deputy

GWENDOLYN HARVEY
vs
99 CENTS ONLY STORES TEXAS INC ET AL

Officer's Return

Case Number: 2021-CI-05403
Court: 285th Judicial District Court

Came to hand on the 25th day of March 2021, A.D., at 9:29 o'clock A.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the _____ day of _____ 20____, by delivering to: _____ at 1999 BRYAN ST 900 DALLAS TX 75201-3136 a true copy of this Citation, upon which I endorsed that date of delivery, together with the accompanying copy of the CITATION with ORIGINAL PETITION.

Cause of failure to execute this Citation is _____

Mary Angie Garcia
Clerk of the District Courts of
Bexar County, TX
By: *Ana Cortijo*, Deputy



Mary Angie Garcia
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

RETURN SERVICE REQUESTED

CERTIFIED MAIL



7020 1290 0002 1706 9938



U.S. POSTAGE® PTNEY BOWES
ZIP 78204 \$007.16°
02 4W
0000350844 MAR 25 2021

99 CENTS ONLY STORES TEXAS INC
C/O CT CORPORATION SYSTEM
1999 BRYAN ST 900
DALLAS, TX 75201-3136

2021C105403 3/24/2021 CITCM TNR CORTIJO

7520134264 COSO





**Service of Process
Transmittal**

03/30/2021

CT Log Number 539295193

TO: Mary Kasper
99 Cents Only Stores
4000 Union Pacific Ave
Commerce, CA 90023-3202

RE: Process Served in Texas

FOR: 99 Cents Only Stores Texas, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: GWENDOLYN HARVEY, PLTF. vs. 99 CENTS ONLY STORES TEXAS, INC. AND 99 CENTS ONLY STORES LLC, DFTS.

DOCUMENT(S) SERVED:

COURT/AGENCY: None Specified
Case # 2021CI05403

NATURE OF ACTION: Personal Injury - Slip/Trip and Fall

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Certified Mail on 03/30/2021 postmarked on 03/25/2021

JURISDICTION SERVED : Texas

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 03/30/2021, Expected Purge Date: 04/04/2021
Image SOP
Email Notification, Mary Kasper mary.kasper@99only.com
Email Notification, Mary Kay Delgado marykay.delgado@99only.com
Email Notification, Marlon Mendoza marlon.mendoza@99only.com

REGISTERED AGENT ADDRESS: C T Corporation System
1999 Bryan Street
Suite 900
Dallas, TX 75201
866-331-2303
CentralTeam1@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

NO. 2021CI05403

GWENDOLYN HARVEY	§	IN THE DISTRICT COURT
<i>Plaintiff</i>	§	
	§	
VS.	§	
	§	BEXAR COUNTY, TEXAS
99 CENTS ONLY STORES	§	
TEXAS, INC. AND 99 CENTS	§	
ONLY STORES, LLC	§	
<i>Defendants</i>	§	285 TH JUDICIAL DISTRICT

DEFENDANTS ORIGINAL ANSWER AND
DEMAND FOR JURY TRIAL

COMES NOW, 99 CENTS ONLY STORES TEXAS, INC. AND 99 CENTS ONLY STORES, LLC, Defendants in the above-entitled and numbered cause and in answer to Plaintiff's Petition and would respectfully show unto the Court as follows:

I.

Defendants generally deny the allegations of the Petition and thus asserting the privilege of having such allegations proved by a preponderance of the evidence. Defendants will amend their answer as necessary.

Defendants are alleging contributory negligence on the part of the Plaintiff and unavoidable accident.

II.

99 CENTS ONLY STORES, 99 CENTS ONLY STORES, LLC and 99 CENTS ONLY STORES TEXAS, INC., hereinafter referred to as Defendants, in this cause demands trial by jury pursuant to Rule 216, Texas Rules of Civil Procedure, and tenders the required fee.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that petitioner take nothing by reason of this suit, that the Defendants be discharged and that they go hence with their costs without delay, and for such other and further relief, both general and special, at law and in equity, to which they may show themselves be justly entitled.

Respectfully submitted,

GRIFFIN & GRIFFIN



MICHAEL J. GRIFFIN III

SBN: 08463020

Michael@griffinandgriffin.us (no e-service)

MARILYN O. GRIFFIN

SBN: 08463020

Marilyn@griffinandgriffin.us (no e-service)

3003 South Loop West, Suite 206

Houston, Texas 77054-1372

(713) 228-6568 Tel.

(713) 228-9900 Fax.


E-service: eservice@griffinandgriffin.us

**ATTORNEYS FOR DEFENDANTS
99 CENTS ONLY STORES TEXAS, INC.
AND 99 CENTS ONLY STORES, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel of record by certified mail, return receipt requested, e-service, e-mail, facsimile transmission, and/or hand delivered by messenger, on this the 1st day of April 2021, in compliance with Tex.R.Civ.P. 21:

Ryan L. Orsatti
RYAN ORSATTI LAW
4634 De Zavala Rd.
San Antonio, Texas 78249
Tel. 210/525-1200
Fax. 210/951-5545
Email: ryan@ryanorsattilaw.com



MICHAEL J. GRIFFIN III
MARILYN O. GRIFFIN